IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA 143 of 1997.

Judgment Reserved on 6.11.2008.

Date of decision 17.11.2008.

Pritam Singh and others …**Appellants.**

Versus

Shri Vijay Kumar and others …**Respondents.**

Coram:

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?[1] ***No.***

For the appellants Mr. Ajay Sharma, Advocate.

For the respondents Mr. Ashwani Sharma, Advocate.

Dev Darshan Sud, J.

The defendants have preferred this second appeal against the judgment and decree of the learned District Judge affirming the decree passed in favour of the respondents (successor in interest of the respondent / plaintiff) declaring her to be the tenant in possession of the suit land and declaring the entries in the revenue record showing appellants 1 to 4 as tenants and as owners and in

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[1] ***Whether Reporters of Local Papers are allowed to see the judgment? Yes.***

pursuance to mutation No. 3213 conferring ownership rights on the defendants as illegal. A decree declaring sale deed dated 5.1.1993 executed by appellant No. 1 in favour of appellants 9 and 10 as having no effect on the tenancy rights of the plaintiffs over the suit land. The sale made by Sagli Ram, Kamla Devi, Rukmani and Ramesh Chand in favour of Bakshi Ram and Lachhmi Devi and subsequent sale made by Bakshi Ram in favour of Lachmi Devi has been declared as inoperative upon the rights of the plaintiffs. A decree for permanent prohibitory injunction restraining these defendants - appellants from interfering in the peaceful possession of the plaintiff was granted. In appeal, the learned District Judge, on reappreciation of the entire evidence, has affirmed the findings of fact as arrived at by the learned trial Court.

The plaintiff approached the trial Court in the suit out of which these proceedings arise praying for a decree of declaration to the effect that land measuring 12 Kanals 12 Marlas, being (a) 10 Kanals 5 Marlas, Khasra No. 10R/22/3 and 23/1, and (b) 2 Kanals 4 Marlas, khasra No. 16R/17/4, is in the tenancy of the plaintiff and all subsequent

actions taken by the defendants with the intent and purport to oust her from the suit land are illegal. The defendants contested the suit on a number of grounds including locus standi, estoppel and jurisdiction. The defendants claim that mutation No. 3213 was rightly sanctioned in their favour. The basic issue was as to whether the plaintiff was inducted as a tenant over the suit land by the defendants either personally or through their attorney. The learned trial Court framed eight issues and on the crucial issues on the question of tenancy created in favour of the respondent – plaintiff and her entitlement to a decree for injunction, held in her favour. The other issue, that is, whether defendants 1 to 4 (appellants 1 to 4 herein) are tenants at will and defendants 5 to 7 (appellants 5 to 7 herein) were co sharers, was decided against them. The court also held that on the question of jurisdiction, the civil Court had jurisdiction and that proprietary rights could not have been conferred on appellants 1 to 4 under the Himachal Pradesh Tenancy and Land Reforms Act by virtue of the fact that in a previous litigation between the owners and the predecessors in interest

of the other defendants who claimed tenancy, their right had been negatived and it could not form the basis of any further grant or inheritance.

One of the points which was urged by the defendants- appellants was that the two Chakotanamas Ex.PW-4/A and PW-3/A inducting the plaintiff as a tenant had not been proved in accordance with law and that the grantors were not the authorized attorneys of the landlords. The Court considered Ex.P-3 and P-4 which is the copy of the judgment and decree sheet in a suit instituted by Vidya Sagar and Sagli Ram against original owners in the year 1976 against Ram Lok and Ram Piari, praying for a decree of declaration and injunction that Ram Lok is not the tenant of the suit land. Be it stated here that Sagli Ram, appellant No. 8 and appellants 5 to 7 are the predecessors in interest of Vidya Sagar. Appellants 1 to 4 are the successors in interest of Shri Ram Lok. This judgment and decree was affirmed by the learned District Judge on 18.2.1981 vide Ex.P-5. On proof of the Chakotanamas, the learned Court holds that Ex.PW-4/A was executed by PW-3 Bhagat Ram on behalf of defendants Rukmani Devi, Kamla Devi, Ramesh Chand and Sagli Ram in his

capacity as attorney. PW-2 Bhagat Ram has stated in evidence that though he could not identify his signatures because of weak eye sight, but had in fact executed this Chakotanama. He admitted the contents of this document in toto. The plaintiff also examined PW-4, who is the marginal witness to this document who has fully supported her case. Later on some doubt arose about the capacity of Bhagat Ram as attorney of Sagli Ram, so another Chakotanama Ex.PW-3/A was executed by Mohan Lal, PW-3 as attorney of Sagli Ram in the presence of PW-5. The Court holds that there is no evidence or pleadings that these documents are the result of fraud or fabrication and none of the owners of the land, that is the landlords entered the witness box to say that PW-2 and PW-5 were not their duly authorized attorney. The Court also took into consideration the cross examination of appellant No. 1 Pritam Singh who admitted that both Bhagat Ram and Mohan Lal PWs 2 and 3 were the attorney(s) of the owners. In this view of the matter, the learned Court drew an adverse inference against the appellants herein and the landlords who were also impleaded as defendants.

Pursuant to the judgment Ex.P-3, P-4 and P-5, the revenue record was not corrected and appellants 1 to 4 used the unrectified record to have mutation No. 3213 sanctioned in their favour to have proprietary rights conferred upon them. The judgment and decree of the civil Court being conclusive, this mutation could not have any legal effect.

In appeal, all these points were reiterated. The learned District Judge considers in detail that the appellants had urged regarding creation of tenancy in their favour and consequent conferment of proprietary rights, the authority of the attorneys was also challenged, it was also urged that the chakotanamas required registration under the provisions of the Registration Act, 1908. The learned Court notes and rightly so that although an attempt has been made to confuse the facts, the basic point for determination was regarding possession of the suit land and whether the plaintiff was a tenant thereon or not. The Court holds that the findings of the learned trial Court on this issue cannot be reversed as a perusal of Ex.P-3, copy of the judgment of the Senior Sub

Judge, dated 15.9.1977 negatived the contention of the appellants that they were the tenants which finding was confirmed in appeal vide Ex.P-5. As a consequence, the revenue authorities were bound by these judgments. The court also concludes that on the date of creation of the tenancy in favour of the plaintiff, the possession was that of the landlords and subsequently, they filed collusive proceedings through various persons in order to wriggle out of the tenancy. An adverse inference has been drawn against the landlords who have been fighting this litigation by proxy by not appearing in the witness box and denying the authority of the attorney(s) to have created tenancy against the plaintiff.

This appeal was admitted on 1.9.1997 but no question of law was formulated. Learned counsel for the appellant urges that the question regarding the legality of Ex.PW-3/A and PW-4/A is required to be adjudicated / determined as these documents were not executed by the duly authorized attorney(s) of the landlords. This contention deserves to be rejected outright, as the evidence on record establishes that both documents were executed by the attorney(s) of the landlords as proved on record.

Even Pritam Singh, appellant No. 1 admitted in his cross examination the authority of the attorneys to create such a tenancy. The successors in interest of the landlords did not appear in the witness box to deny their authority. In this view of the matter, there could be no other conclusion save and except that both these documents were executed in accordance with law. Moreover the learned Courts below have rightly drawn an adverse inference against the landlords.

Learned counsel then urged that the Court had no jurisdiction to try the suit as it related to conferment of proprietary rights and in view of the decision in Chuhniya Devi v. Jindu Ram, 1991 (1) Sim. L.C. 223, the suit could not be entertained. This judgment was later on distinguished in Tajdin v. Smt. Milkho Devi and others, Latest HLJ 2005 (HP) 825. The submission requires to be rejected as both the Courts have held concurrently that after the judgment Ex. P-3, P-4 and P-5 negativing the claim of the predecessor in interest of appellants 1 to 4 herein as a tenant, they could not claim tenancy on the basis of succession from the tenant. The revenue authorities acted outside the law and as

such the jurisdiction of the civil Court was not barred. The revenue authorities were bound by the judgment of the civil Court, as the decree had attained finality and allowing wrong entries to continue in the revenue record could not form the basis of any grant. To say and urge that the jurisdiction of the civil Court is barred would be granting to the revenue authorities jurisdiction to determine the legality of a decree passed by the civil Court which cannot be permitted.

Learned counsel then submits that the documents, that is Ex.PW-4/A and Ex.PW-3/A were compulsorily registrable. I do not find that this submission can be accepted. Even if assuming for the sake of arguments that both these documents required registration, the proviso to Section 49 of the Act as aforesaid clearly permits the documents to be used for collateral purposes to determine possession. I find from the evidence on record that the appellants have been setting up pleas which are dishonest. The learned appellate Court has rightly dismissed the appeal with costs. I do not find that the questions urged require consideration. This appeal is accordingly dismissed. Pending

application(s) shall stand dismissed. Costs on parties.

November 17, 2008 (PC). (Dev Darshan Sud), J.